

WATER SUPPLY AND SURPLUS WATER AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill regulates municipalities that provide water to customers outside respective political boundaries.

Highlighted Provisions:

This bill:

- defines terms;
- describes the process by which a municipality may provide water to customers outside the municipality's political boundary;
- states that a municipality may not sell the municipality's waterworks, in whole or in part, except as provided in statute;
- creates reporting requirements; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

10-7-14, Utah Code Annotated 1953

10-8-14, as last amended by Laws of Utah 2016, Chapter 419

10-8-22, Utah Code Annotated 1953

ENACTS:

73-5-16, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-7-14** is amended to read:

10-7-14. Rules and regulations for use of water.

(1) As used in this section:

(a) "Designated water service area" means the area defined by a municipality in accordance with the Utah Constitution, Article XI, Section 6, Subsection (1)(c).

(b) "Retail customer" means an end user:

(i) who receives culinary water directly from a municipality's waterworks system; and

(ii) whom the municipality described in Subsection (1)(b)(i) bills for water service.

(c) (i) "Waterworks system" means municipally owned collection, treatment, storage, and distribution facilities for culinary or irrigation water, including any pipe, hydrant, or appurtenance to a pipe or hydrant.

(ii) "Waterworks system" does not include a water right or a source of supply such as a well, spring, stream, or share in a mutual irrigation company.

(2) ~~[Every city and town]~~ A municipality may enact ordinances, rules and regulations for the management and conduct of the waterworks system owned or controlled by it.

(3) A municipality that provides water to a retail customer outside of the municipality's boundary shall:

(a) create and maintain a map showing:

(i) the municipality's designated water service area; and

(ii) each area outside the municipality's designated water service area where a retail customer receives water service from the municipality;

(b) transmit a copy of the map described in Subsection (3)(a) to the state engineer;

(c) if the municipality has more than 500 retail customers, post the map described in Subsection (3)(a) on the municipality's website;

(d) define, by ordinance, the area included in the municipality's designated water service area;

(e) adopt, by ordinance, any municipality rule or regulation applicable to the municipality's designated water service area or to a retail customer located outside of the municipality's designated water service area; and

(f) adopt, by ordinance, reasonable water rates for retail customers in the municipality's designated water service area, in accordance with Section 10-8-22.

(4) Within the municipality's designated water service area, a municipality shall:

(a) provide service to all retail customers in a manner consistent with principles of

64 equal protection; and

65 (b) apply restrictions on water use to all retail customers in times of anticipated or
66 actual water shortages in a manner consistent with principles of equal protection.

67 (5) Nothing in this section:

68 (a) prohibits a municipality from enacting a service restriction or other restriction:

69 (i) affecting:

70 (A) a localized area; or

71 (B) the municipality's entire designated water service area; and

72 (ii) (A) based on an operational or maintenance need;

73 (B) based on an emergency situation; or

74 (C) to address a health, safety, or general welfare need;

75 (b) expands or diminishes the ability of a municipality to enter into a contract to supply
76 water outside of the municipality's designated water service area; or

77 (c) alters the authorities or definitions described in Title 19, Chapter 4, Safe Drinking
78 Water Act.

79 (6) A municipality may not sell or convey an interest, in part or in whole, of the
80 municipality's waterworks system, except to a public entity as defined in Section 73-1-4.

81 Section 2. Section **10-8-14** is amended to read:

82 **10-8-14. Utility and telecommunications services -- Service beyond municipal**
83 **limits -- Retainage -- Notice of service and agreement.**

84 (1) As used in this section, "public telecommunications service facilities" means the
85 same as that term is defined in Section 10-18-102.

86 (2) A municipality may:

87 (a) construct, maintain, and operate waterworks, sewer collection, sewer treatment
88 systems, gas works, electric light works, telecommunications lines, cable television lines,
89 public transportation systems, or public telecommunications service facilities;

90 (b) authorize the construction, maintenance and operation of the works or systems
91 listed in Subsection (2)(a) by others;

92 (c) purchase or lease the works or systems listed in Subsection (2)(a) from any person
93 or corporation; and

94 (d) sell and deliver the surplus product or service capacity of any works or system

listed in Subsection (2)(a), not required by the municipality or the municipality's inhabitants, to others beyond the limits of the municipality, except the sale and delivery of:

(i) retail electricity beyond the municipal boundary is governed by Subsections (3) through (8); ~~and~~

(ii) cable television services or public telecommunications services is governed by Subsection (12)~~[-]; and~~

(iii) water is governed by Sections 10-7-14 and 10-8-22.

(3) If any payment on a contract with a private person, firm, or corporation to construct waterworks, sewer collection, sewer treatment systems, gas works, electric works, telecommunications lines, cable television lines, public transportation systems, or public telecommunications service facilities is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

(4) (a) Except as provided in Subsection (4)(b), (6), or (10), a municipality may not sell or deliver the electricity produced or distributed by ~~its~~ the municipality's electric works constructed, maintained, or operated in accordance with Subsection (2) to a retail customer located beyond ~~its~~ the municipality's municipal boundary.

(b) A municipality that provides retail electric service to a customer beyond ~~its~~ the municipality's municipal boundary on or before June 15, 2013, may continue to serve that customer if:

(i) on or before December 15, 2013, the municipality provides the electrical corporation, as defined in Section 54-2-1, that is obligated by ~~its~~ the municipality's certificate of public convenience and necessity to serve the customer with an accurate and complete verified written notice described in Subsection (4)(c) that identifies each customer served by the municipality beyond ~~its~~ the municipality's municipal boundary;

(ii) no later than June 15, 2014, the municipality enters into a written filing agreement for the provision of electric service with the electrical corporation; and

(iii) the Public Service Commission approves the written filing agreement in accordance with Section 54-4-40.

(c) The municipality shall include in the written notice required in Subsection (4)(b)(i) for each customer:

(i) the customer's meter number;

(ii) the location of the customer's meter by street address, global positioning system coordinates, metes and bounds description, or other similar method of meter location;

(iii) the customer's class of service; and

(iv) a representation that the customer was receiving service from the municipality on or before June 15, 2013.

(5) The written filing agreement entered into in accordance with Subsection (4)(b)(ii) shall require the following:

(a) The municipality shall provide electric service to a customer identified in accordance with Subsection (4)(b)(i) unless the municipality and the electrical corporation subsequently agree in writing that the electrical corporation will provide electric service to the customer.

(b) If a customer who is located outside the municipal boundary and who is not identified in accordance with Subsection (4)(b)(i) requests service from the municipality after June 15, 2013, the municipality may not provide that customer electric service unless the municipality submits a request to and enters into a written agreement with the electric corporation in accordance with Subsection (6).

(6) (a) A municipality may submit to the electrical corporation a request to provide electric service to an electric customer described in Subsection (5)(b).

(b) If a municipality submits a request, the electrical corporation shall respond to the request within 60 days.

(c) If the electrical corporation agrees to allow the municipality to provide electric service to the customer:

(i) the electrical corporation and the municipality shall enter into a written agreement;

(ii) the municipality shall agree in the written agreement to subsequently transfer service to the customer described in Subsection (5)(b) if the electrical corporation notifies, in writing, the municipality that the electrical corporation has installed a facility capable of providing electric service to the customer; and

(iii) the municipality may provide the service if:

(A) except as provided in Subsection (6)(c)(iii)(B), the Public Service Commission approves the agreement in accordance with Section 54-4-40; or

(B) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7),

the governing board of the electrical cooperative approves the agreement.

(d) The municipality or the electrical corporation may terminate the agreement for the provision of electric service if the Public Service Commission imposes a condition authorized in Section 54-4-40 that is a material change to the agreement.

(7) If the municipality and electrical corporation make a transfer described in Subsection (6)(c)(ii):

(a) (i) the municipality shall transfer the electric service customer to the electrical corporation; and

(ii) the electrical corporation shall provide electric service to the customer; and

(b) the municipality shall transfer a facility in accordance with and for the value as provided in Section 10-2-421.

(8) (a) In accordance with Subsection (8)(b), the municipality shall establish a reasonable mechanism for resolving potential future complaints by an electric customer located outside ~~[its]~~ the municipality's municipal boundary.

(b) The mechanism shall require:

(i) that the rates and conditions of service for a customer outside the municipality's boundary are at least as favorable as the rates and conditions of service for a similarly situated customer within the municipality's boundary; and

(ii) if the municipality provides a general rebate, refund, or other payment to a customer located within the municipality's boundary, that the municipality also provide the same general rebate, refund, or other payment to a similarly situated customer located outside the municipality's boundary.

(9) The municipality is relieved of any obligation to transfer a customer described in Subsection (5)(b) or facility used to serve the customer in accordance with Subsection (6)(c)(ii) if the municipality annexes the property on which the customer is being served.

(10) (a) A municipality may provide electric service outside of ~~[its]~~ the municipality's municipal boundary to a facility that is solely owned and operated by the municipality for municipal service.

(b) A municipality's provision of electric service to a facility that is solely owned and operated by the municipality does not expand the municipality's electric service area.

(11) Nothing in this section expands or diminishes the ability of a municipality to enter

into a wholesale electrical sales contract with another municipality that serves electric customers to sell and deliver wholesale electricity to the other municipality.

(12) A municipality's actions under this section related to works or systems involving public telecommunications services or cable television services are subject to the requirements of Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

Section 3. Section **10-8-22** is amended to read:

10-8-22. Water rates.

(1) As used in this section:

(a) "Designated water service area" means the area defined by a municipality in accordance with the Utah Constitution, Article XI, Section 6, Subsection (1)(c).

(b) "Large municipal drinking water system" means a municipally owned and operated drinking water system serving a population of 10,000 or more.

(c) "Retail customer" means an end user:

(i) who receives culinary water directly from a municipality's waterworks system; and

(ii) whom the municipality described in Subsection (1)(c)(i) bills for water service.

(2) ~~They may~~ A municipality shall fix the rates to be paid for the use of water furnished by the ~~city~~ municipality.

(3) The setting of municipal water rates is a legislative act.

(4) Within the municipality's designated water service area, a municipality shall:

(a) establish, by ordinance, reasonable rates for the services provided to the municipality's retail customers;

(b) use the same method of providing notice to all retail customers of proposed rate changes; and

(c) allow all retail customers the same opportunity to appear and participate in a public meeting addressing water rates.

(5) (a) A municipality may establish different rates for different classifications of retail customers within the municipality's designated water service area, if the rates and classifications have a reasonable basis.

(b) A reasonable basis for charging different rates for different classifications may include, among other things, a situation in which:

(i) there is a difference in the cost of providing service to a particular classification;

219 (ii) one classification bears more risk in relation to a system operation or obligation;
220 (iii) retail customers in one classification invested or contributed to acquire a water
221 source or supply or build or maintain a system differently than retail customers in another
222 classification;
223 (iv) the needs or conditions of one classification:
224 (A) are distinguishable from the needs or conditions of another classification; and
225 (B) based on economic, public policy, or other identifiable elements, support a
226 different rate; or
227 (v) there is a differential between the classifications based on a cost of service standard
228 or a generally accepted rate setting method, including a standard or method the American
229 Water Works Association establishes.
230 (c) An adjustment based solely on the fact that a particular classification of retail
231 customers is located either inside or outside of the municipality's corporate boundary is not a
232 reasonable basis.
233 (6) (a) If more than 10% of the retail customers within a large municipal drinking water
234 system's designated water service area are located outside of the municipality's corporate
235 boundary, the municipality shall:
236 (i) post on the municipality's website the rates assessed to retail customers within the
237 designated water service area; and
238 (ii) establish an advisory board to make recommendations to the municipal legislative
239 body regarding water rates, capital projects, and other water service standards.
240 (b) In establishing an advisory board described in Subsection (6)(a)(ii), a municipality
241 shall:
242 (i) if more than 10% but no more than 30% of the municipality's retail customers
243 receive service outside the municipality's municipal boundary, ensure that at least 20% of the
244 advisory board's members represent the municipality's retail customers receiving service
245 outside the municipality's municipal boundary;
246 (ii) if more than 30% of the municipality's retail customers receive service outside of
247 the municipality's municipal boundary, ensure that at least 40% of the advisory board's
248 members represent the municipality's retail customers receiving service outside of the
249 municipality's municipal boundary; and

(iii) in appointing board members who represent retail customers receiving service outside of the municipality's municipal boundary, as required in Subsections (6)(b)(i) and (ii), solicit recommendations from each municipality and county outside of the municipality's municipal boundary whose residents are retail customers within the municipality's designated water service area.

(7) A municipality that supplies water outside of the municipality's designated water service area shall supply the water only by contract and shall include in the contract the terms and conditions under which the contract can be terminated.

(8) A municipality shall:

(a) notify the director of the Division of Drinking Water of a contract the municipality enters into with a person outside of the municipality's designated water service area, including the name and contact information of the person named in each contract; and

(b) each year, provide any supplementing or new information regarding a contract described in Subsection (8)(a), including whether there is no new information to provide at that time.

Section 4. Section **73-5-16** is enacted to read:

73-5-16. State engineer to publish maps.

The state engineer shall publish conspicuously on the state engineer's website a map a municipality submits in accordance with Subsection 10-7-14(3)(a).

Section 5. **Delayed effective date.**

This bill takes effect on January 1, 2021, if the amendment to the Utah Constitution proposed by *****, 2019 General Session, passes the Legislature and is approved by a majority of those voting on it at the next regular general election.